STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Ameren Water Company	**:**	
	:	
Application for Approval of its Annual Reconciliation of Purchased Water and Purchased Sewage Treatment Surcharges pursuant to 83 Ill. Adm. Code 655.	**:**	**10-0203**

PROPOSED ORDER

DATED: January 16, 2015

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By the Commission:

I. INTRODUCTION AND PROCEDURAL HISTORY

Illinois-American Water Company ("IAWC" or "Company") filed, with the Illinois Commerce Commission ("Commission"), its Application for Approval of its Reconciliation of Purchased Water and Purchased Sewage Treatment Surcharges for 2009 pursuant to pursuant to Section 9-220.2 of the Public Utilities Act ("Act") and Ill. Adm. Code 655 ("Part 655").

Pursuant to due notice, hearings were held before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois. Appearances were entered by respective counsel for IAWC, the Commission Staff ("Staff") and the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois ("AG"). Testimony filed by IAWC witnesses Rich Kerckhove, Michael Smyth and Kevin Hillen, and by Staff witnesses Mary Everson and William Atwood, was presented at the hearing. No other appearances were entered and no other intervening petitions were filed. At the conclusion of the hearings, the record was marked Heard and Taken. Initial briefs ("IBs") and reply briefs ("RBs") were filed by IAWC, Staff and the AG.

II. STATUTORY AUTHORITY AND ADMINISTRATIVE CODES

Section 9-220.2 of the Act states, in part:

> (a) The Commission may authorize a water or sewer utility to file a surcharge which adjusts rates and charges to provide for recovery of (i) the cost of purchased water, (ii) the cost of purchased sewage treatment service, (iii) other costs which fluctuate for reasons beyond the utility's control or are difficult to predict, or (iv) costs associated with an investment in qualifying infrastructure plant, independent of any other

matters related to the utility's revenue requirement. A surcharge approved under this Section can operate on an historical or a prospective basis.

…

(c) On a periodic basis, the Commission shall initiate hearings to reconcile amounts collected under each surcharge authorized pursuant to this Section with the actual prudently incurred costs recoverable for each annual period during which the surcharge was in effect.

Section 8-306(m) of the Act states:

By December 31, 2006, each water public utility shall file tariffs with the Commission to establish the maximum percentage of unaccounted-for-water that would be considered in the determination of any rates or surcharges. The rates or surcharges approved for a water public utility shall not includes charges for unaccounted-for-water in excess of this maximum percentage without well-documented support and justification for the Commission to consider in any request to recover charges in excess of the tariffed maximum percentage.

83 Illinois Administrative Code 655, “Purchased Water and Sewage Treatment Surcharges,” implements Section 9-220.2 of the Act. Some of those provisions, including ones cited by the Parties, are as follows:

Section 655.10, “Applicability,” provides:

a) A purchased water/sewage treatment surcharge shall be applied to water/sewer bills of customers of water/sewer utilities in the applicable rate zone for utilities having a purchased water/sewage treatment surcharge rider and information sheet in effect and on file with the Illinois Commerce Commission (Commission).

b) A purchased water/sewage treatment surcharge shall be applied, during the effective month, in accordance with the provisions of this Part.

c) Each purchased water/sewage treatment surcharge shall be determined in accordance with Section 655.40 of this Part.

Section 655.30, Recoverable Purchased Water/Sewage Treatment Costs, provides:

a) Costs recoverable through the purchased water/sewage treatment surcharge shall include the following:

1) The cost of purchased water from an entity other than the utility (including wheeling or delivery charges); and

2) The cost of purchased sewage treatment from an entity other than the utility.

b) Recoverable purchased water/sewage treatment costs shall be offset by the revenues derived from transactions at rates not subject to the purchased water/sewage treatment surcharge to the extent that costs incurred in connection with such transactions are recoverable costs under subsection (a) above. Subsection (a) shall apply to transactions subject to rates contained in tariffs on file with the Commission, in contracts entered into pursuant to such tariffs, and in any other contracts providing for purchased water/sewage treatment.

c) Revenues from penalty charges approved by the Commission that relate to purchased water/sewage treatment shall offset recoverable costs as determined under Section 655.40 of this Part.

d) The determination of costs recoverable from customers through the purchased water/sewage treatment surcharge shall not include water used in, and/or sewage treated for, facilities either owned or leased by the utility.

Section 655.40, "Determination of Purchased Water/Sewage Treatment Surcharge," contains formulas and other provisions applicable to the determination of surcharges.

Section 655.50, "Annual Reconciliation," sets forth rules and procedures applicable to the Annual Reconciliation filing, including schedules and other documentation to be submitted and timelines to be followed. Subsection 655.50(b)(3)(C) provides, "The reconciliation components shall not include costs associated with unaccounted for water or any storm water inflow or infiltration in contravention of an Order of the Commission directing that such costs not be reflected in rates."

III. PURPOSE OF PROCEEDING; CONTESTED ISSUES

IAWC assesses purchased water and sewage treatment surcharges pursuant to Section 9-220.2 of the Act, Ill. Adm. Code Part 655 and IAWC's surcharge riders.

In this proceeding, IAWC seeks Commission approval of its annual reconciliation of purchased water surcharges for the 2009 reconciliation year for the Alpine Heights, Chicago Suburban, Fernway, Moreland, Southwest Suburban, Waycinden, South Beloit and DuPage County Purchased Water Areas. The reconciliation year consists of the 12 months ended December 31, 2009.

IAWC also seeks approval of its annual reconciliation of purchased sewage treatment surcharges for the 2009 reconciliation year for the Romeoville, Rollins, Country Club and Valley View Purchased Wastewater Treatment Areas.

Contested issues are Staff's proposed disallowance of a portion of the excess sewerage flow charges which were imposed on IAWC by the City of Elmhurst, and were passed on to IAWC's customers, as discussed in Section V below; and IAWC's allowance for "unbilled-authorized consumption," which the AG opposed in its initial brief, as discussed below under Section IV, "Unbilled Water Issues." These issues were also contested in the IAWC reconciliation proceeding in Docket No. 09-0251. The Commission's Order in that docket is on appeal.

The positions of the Parties in the current case are summarized below. These summaries are intended to identify the positions of the Parties, not the findings of the Commission, unless otherwise noted.

IV. UNBILLED WATER ISSUES

More water is delivered to the IAWC distribution system than it delivers and sells to customers. The difference between the quantity of water delivered to the IAWC distribution system and the quantity of water delivered to customers is sometimes described as non-revenue water ("NRW"). (IAWC Ex. 3.0 at 2) IAWC witness Hillen identified two "separate and distinct" subsets of non-revenue water. (*Id*. at 3) They are unaccounted for water ("UFW") and unbilled authorized water ("UAW"). Unbilled authorized water is also referred to as "unbilled authorized consumption."

With respect to unaccounted-for-water (UFW), IAWC's tariff sets forth a maximum percentage – for each of its service areas -- for which the Company is allowed to recover costs. IAWC's tariff defines unaccounted-for-water as "the amount of water that enters the Company's distribution system and is not used for sales to customers or for other known purposes as determined by meter measurement or, where no meter reading is available, by reasonable estimation procedures."

In Docket 09-0151, the Commission accepted, as reasonable, the characterization of UFW "as the difference between water system input volume and authorized consumption: i.e., water that has for practical purposes, been lost." (Order, Docket 09-0151, at 24)

With respect to unbilled authorized water (UAW), the Commission found, "By contrast, unbilled authorized water is not water that has been 'lost' due to leaks, main breaks or other causes. Rather, unbilled-authorized water is actually used -- but is not metered and billed -- for various known purposes such as hydrant and main flushing, street cleaning and fire fighting." (*Id*.; see also IAWC Ex. 3.0 at 2 in Docket 10-0203)

As it did in Dockets 08-0218 and 09-0151, IAWC proposes an allowance of 1.25% as a reasonable estimate of unbilled authorized water usage, based on the American Water Works Association ("AWWA") M36 Manual. Staff concurs.

In its brief, the AG opposes IAWC's proposal. The AG argues that unbilled authorized water falls within the definition of unaccounted-for-water in IAWC's unaccounted-for-water tariff, and Section 8-306(m) of the Act. The AG contends that the authorized but unbilled factor IAWC has applied does not meet the requirements of the tariffs and the statute as it is not known, it is not measured and the Company has not applied any estimation procedures.

Staff and IAWC note that the Commission previously approved use of the 1.25% value, over the AG's objections, in IAWC Reconciliation Dockets 08-0218 and 09-0251.

A. IAWC Position

IAWC comments that after "failing to file any testimony in this proceeding," the AG then proposed, in its initial brief, to eliminate the 1.25% factor that IAWC and Staff included in their calculations to reflect the recovery of unbilled authorized consumption. (IAWC RB at 3) IAWC complains that "never once through the evidentiary process did [the AG] challenge [the] position or evidence offered by the Company or Staff," but instead chose to argue, "for the first time, in its Initial Brief that the Company did not adequately support the use of 1.25% as a reasonable estimate of unbilled authorized consumption." (IAWC RB at 3)

According to IAWC, the AG's arguments and charts reveal a fundamental misunderstanding of what constitutes Unaccounted-for Water ("UFW") as well as its relationship to Non-Revenue Water ("NRW"). (IAWC RB at 3, citing AG IB at 4-5) IAWC states that the AG "mistakenly" characterizes the 1.25% unbilled authorized consumption factor as an "adder" or increase to the UFW caps set forth in the Company's tariff. IAWC contends that in fact, the 1.25% factor represents a category of water that is separate and distinct from UFW. (IAWC RB at 3-4)

As explained in the Company testimony, IAWC's Tariff Sheet No. 53.1 established maximum percentages of UFW costs recoverable under the Purchased Water Surcharge Rider. UFW is defined by this Commission-approved tariff as "the amount of water that enters the Company's distribution system and is not used for sales to customers or for other known purposes as determined by meter measurement or, where no meter reading is available, by reasonable estimation procedures." (IAWC RB at 4, citing Docket No. 09-0151, Order at 23) IAWC states that the water included in the 1.25% factor is by definition not UFW, but rather is unbilled authorized consumption (i.e., water that is used ". . . for other known purposes - the volume of which is determined by reasonable estimation procedures."). (IAWC RB at 4, citing Docket No. 09-0151, Order at 23) IAWC asserts that this category of water is recognized throughout the industry and is commonly utilized in such activities as firefighting, fire training, street cleaning, hydrant testing, sewer main flushing, and water main flushing.

IAWC submits that the Commission has previously spoken on this issue and agreed with the Company and Staff that unbilled authorized consumption should not be considered a component of UFW. (IAWC RB at 4, citing Docket 08-0218, Order, August 19, 2009). The Company states that it has always maintained, and that the Commission Staff agrees, that the 1.25% unbilled authorized consumption factor was not a part of UFW. (IAWC RB at 4, citing IAWC Exhibit 3.0 at 5 in Docket 09-0151) IAWC further notes the Commission found in Docket No. 08-0218 that the 1.25% factor "falls under the heading NRW, not UFW. NRW is the basis for the 1.25% adjustment. UFW percentages have already been established by tariff." (IAWC RB at 4, citing Docket 08-0218, Order at 10) The Commission stated that it "concurs with IAWC that the AG and Homer Glen are in error. The Commission also agrees with Staff that adoption of the 1.25% adjustment from the AWWA M36 manual is reasonable and that since unbilled authorized consumption in this case was determined to have resulted from firefighting, main flushing and street cleaning, and can be determined by reasonable estimation procedures, it is not a component of UFW." (IAWC RB at 4-5, citing Docket 08-218, Order at 10-11)

In its reply brief, IAWC next argues, "IAWC's use of the 1.25% unbilled authorized consumption factor is justified and supported by evidence in this Docket and well-settled precedent in previous Commission dockets." (IAWC RB at 5)

IAWC states that the AG, in its initial brief, continues to "erroneously argue" that the 1.25% unbilled authorized consumption factor is not supported by appropriate documentation. (IAWC RB at 5, citing AG IB at 6) IAWC responds, "As described and supported in IAWC's testimony (IAWC Exhibit No. 3.0 pp. 4-5) the 1.25% factor is supported by and consistent with the AWWA M36 Manual." (IAWC RB at 5) IAWC asserts that the American Water Works Association ("AWWA") was established in 1881; is the largest nonprofit, scientific and educational association dedicated to managing and treating water; is supported by approximately 50,000 members, and promotes public health, safety, and welfare through the improvement of the quality and quantity of water delivered to the public. IAWC adds that AWWA advances the knowledge of the design, construction, operation, water treatment and management of water utilities and developing standards for procedures, equipment and materials used by public water supply systems. (*Id*.)

IAWC maintains that the AWWA M36 Manual, "Water Audits and Loss Control Programs," is an authoritative resource regarding non-revenue water, and that through the M36 Manual, the AWWA summarized the audits of numerous water utilities around the world to arrive at the 1.25% "reasonable estimate" of unbilled authorized consumption. (IAWC RB at 5) IAWC submits that the AG's argument that the 1.25% unbilled authorized consumption factor is not supported by appropriate documentation is the same claim it made in Dockets 09-0151 and 08-0218, and was rejected by the Commission in both instances. Specifically the Commission "agree[d] with Staff and IAWC that use the 1.25% value in the AWWA M36 manual provides a reasonable and more accurate estimate of the amount of unbilled-authorized consumption for such uses

as hydrant and main flushing, firefighting and street cleaning, for the reconciliation year." (IAWC RB at 5-6, citing Docket 09-0151, Order at 26)

IAWC also asserts that in light of recent Commission action, it is likely that further validation of the M36 Manual factor will become available. (IAWC RB at 6) The Commission, in its Order in Docket No 09-0151, directed IAWC to attempt to track UAC for the 2013 purchased water reconciliation year. That Order stated, in part, "… IAWC is directed to work with the Staff of the Commission's Water Department to develop appropriate methods of tracking unbilled-authorized water consumption for a one-year period…. In light of the alleged difficulty in tracking usage outside of IAWC's control, the Commission authorizes IAWC to develop, in conjunction with Staff, estimation procedures for unbilled authorized consumption that is outside IAWC's control or is otherwise difficult to verify." The Commission next stated, "Further, in order to properly match the one-year tracking period with the next applicable corresponding reconciliation year, the Commission orders the tracking period to begin on January 1, 2013. The results of this tracking shall be presented as part of the reconciliation case for that year." (Docket 09-0151, Order at 26-27)

In the current proceeding, Company witness Hillen stated that IAWC representatives met with Staff to review a proposed tracking methodology and a data template for each service area. The template includes the various UFW categories for each purchased water service area, which will roll up to a composite UFW for the purchased water areas in the district. IAWC states that beginning January 1, 2013, it implemented the tracking methodology, and will present the results of this undertaking in the reconciliation for 2013.

IAWC next argues that the AG "inappropriately" attempts to impose the use of an Illinois Department of Natural Resources ("IDNR") Annual Water Use Audit Form (LMO-2) for the fiscal year ended September 30, 2009, as support for its position that the AWWA M36 Manual should not be used as a reasonable estimate for unbilled authorized consumption. (IAWC RB at 6) IAWC states that the AG argues that nowhere in the AWWA M36 Manual does it explicitly state that it should be used in Illinois Commerce Commission purchased water reconciliation cases, yet the AG offers, in support of its arguments, an IDNR-specific report that estimates, at a very high level, unaccounted-for flow. According to IAWC, "nowhere on the AG Group Exhibit, Company response to data request AG 2.8, does the IDNR report indicate that it should, or could, be used in ICC purchased water reconciliations." (Id. at 6-7) IAWC argues that the report does not match the reconciliation year, nor does it even measure the same metrics that are used in the purchased water reconciliation; and that the AG's offer of LMO-2 evidence should be given no weight. (IAWC RB at 7)

B. AG Position

The AG did not present witness testimony in this proceeding. In its initial brief, the AG argues that "IAWC has not justified the additional 1.25% factor for recovery of alleged authorized, unbilled consumption." (AG IB at 2)

Section II.A of the AG's initial brief is titled, "Section 8-306(m) and IAWC's Tariff Language Define any Water without a Known Use or Well-Documented Support as Unaccounted-for-Water and Subject to the Tariff Cap." (AG IB at 2)

Section 8-306(m) provides, in part, that "each water public utility shall file tariffs with the Commission to establish the maximum percentage of unaccounted-for-water that would be considered in the determination of any rates or surcharges." It then states, "The rates or surcharges approved for a water public utility shall not include charges for unaccounted-for-water in excess of this maximum percentage without well-documented support and justification for the Commission to consider in any request to recover charges in excess of the tariffed maximum percentage."

The AG states that IAWC's tariff defines unaccounted-for-water as "the amount of water that enters the Company's distribution system and is not used for sales to customers or for other known purposes as determined by meter measurement or, where no meter reading is available, by reasonable estimation procedures." (AG IB at 2, citing ILL.C.C No. 24, Sec. No. 2, Original Sheet No. 15.11) The AG next states, "Consistent with Section 8-306(m), the tariff continues that 'rates and surcharges shall not include charges for unaccounted-for-water in excess of the foregoing maximum percentages without well-documented support and justification for the Commission to consider in any request to recover charges in excess of these maximum percentages.'" (*Id*.)

The AG asserts that in this reconciliation, IAWC seeks to charge consumers more than the maximum, tariffed unaccounted-for-water percentages in those areas where it has a higher unaccounted-for-water percentage than authorized for recovery in its tariff, and that IAWC has increased the charges to consumers due to this factor in three districts: Chicago Suburban, Southwest Suburban, and South Beloit. (AG IB at 3)

The AG states that "IAWC characterizes this 1.25% additional charge as representing authorized unbilled consumption, which it argues is not the same as unaccounted-for-water." (AG IB at 3) The AG argues, "However, authorized but unbilled water falls squarely within the definition of unaccounted-for-water in IAWC's unaccounted-for-water tariff: 'the amount of water that enters the Company's distribution system and is not used for sales to customers or for other known purposes as determined by meter measurement or, where no meter reading is available, by reasonable estimation procedures.'…" (AG IB at 3) In the AG's view, "This is consistent with the statute that requires 'well-documented support and justification' for recovery of water that is not used for sales to customers. 220 ILCS 5/8-306(m). Water that is used for 'known' purposes may be treated differently from unaccounted-for-water if it is 'determined by meter measurement,' or is determined by 'reasonable estimation procedures.'" The AG contends that the authorized but unbilled factor IAWC would apply in this docket meets neither of those requirements – it is not known, it is not measured, and the Company has not applied any estimation procedures. (AG IB at 3; see also AG IB at 4))

The AG states that in Docket 08-0218, the Commission allowed the 1.25% adder over the objections of the People and the Village of Homer Glen, but "did not find that IAWC could permanently use this 1.25% adder." (AG IB at 4) The AG asserts that In Docket 09-0151, the Commission permitted the "1.25% adder" over the objections of the People, but "did not go so far as to state that the adder could be implemented permanently," and that "throughout these reconciliations, IAWC has not sought to modify its tariff to increase the maximum UFW or expressly allow the 1.25% additional recovery." (AG IB at 4)

The AG argues, "Notwithstanding the prior Commission orders increasing the purchased water charge by 1.25% more than the unaccounted-for-water tariff percentage, the Commission should conclude that the definitions in IAWC's unaccounted-for-water tariff expressly include authorized but unbilled water. Illinois courts have consistently held that "decisions of the Commission are not res judicata." (AG IB at 5, citing *A. Finkl & Sons Co. v. Illinois Commerce Comm'n*, 250 Ill.App.3d 317, 323, 189 Ill.Dec. 824 (1993)) The AG submits that "the concept of public regulation requires that the Commission have power to deal freely with each situation that comes before it, regardless of how it may have dealt with a similar or even the same situation in a previous proceeding." (AG IB at 5, citing *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n*, 1 Ill.2d 509, 513, 116 N.E.2d 394 (1953)) The AG also argues, "A record containing new evidence or argument that implicates past decisions compels reconsideration on the new record and may require a different result. See 220 ILCS 5/10–103 (West 2006) ('any finding, decision or order made by the Commission shall be based exclusively on the record for decision in the case'). *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 405 Ill. App.3d 389, 407-408 (2010)." (AG IB at 5)

Section II.B of the AG's initial brief is titled, "IAWC's Request to Include 1.25% in the Reconciliation Should be Rejected Because the Record Is Clear that the 1.25% Factor IAWC Seeks to Charge Consumers Has No Relation to IAWC's Actual Authorized, Unbilled Consumption." (AG IB at 5)

The AG asserts that IAWC does not tie the requested 1.25% factor to its actual operations; that IAWC reported "substantially lower levels" of authorized, but unbilled water to the Illinois Department of Natural Resources in the Annual Water Use Audit Forms (LMO-2) for 2009 and 2010 covering calendar year 2009; and that these reports indicate that the actual amount of authorized, unbilled water, described in the reports as "hydrant use" is significantly below 1.25%. (AG IB at 6, citing AG Group Ex. Part 4) The AG's initial brief contains a table comparing hydrant use to the "requested 1.25% factor." (AG IB at 6-7)

The AG submits that IAWC has not reconciled the lower amounts reflected in the LMO-2 forms and the higher authorized, unbilled factor requested in this proceeding. (*Id*. at 7) The AG argues that the LMO-2 reports are the only record evidence based on the company's specific operations, and this evidence demonstrates that the 1.25% value IAWC seeks to recover in this docket is excessive even if the Commission

accepts IAWC's position that authorized, unbilled consumption should be treated separately from unaccounted-for-water. (*Id*. at 7)

Section II.C of the AG's initial brief is titled, "The AWWA M36 Manual Does not Address the Use of the Authorized, Unbilled Consumption Assumption for Purchased Water Reconciliations or for Ratemaking." (AG IB at 7)

The 1.25% figure sought by IAWC is obtained from the American Water Works Association ("AWWA") M36 Manual. The AG asserts that the AWWA M36 Manual assigns a default value of 1.25% as an estimate of unbilled authorized consumption for purposes of conducting water audits, and includes "substantially more uses" than IAWC cites as the basis of its 1.25% factor. (AG IB at 8)

IAWC witness Kevin Hillen testified that typical unbilled, authorized uses include, but are not limited to, hydrant and main flushing, street cleaning and firefighting. (AG IB at 8-9, citing IAWC Ex. 3.0, lines 46-51and 84-86) According to the AG, this is the same usage reported in the LMO-2 form and these reports show a much lower level than the 1.25% IAWC seeks to include in charges to consumers. (*Id*. at 8-9)

The AG asserts that IAWC stated that it was not aware of any unmetered authorized water used from fire hydrants in 2009 for six of the eight uses upon which the 1.25% estimate is based. (AG IB at 9)

Section II.D of the AG's initial brief is named, "The Commission Should Disallow Recovery of Amounts Attributable to the Claimed, Additional 1.25% Usage in Those Districts Where the Unaccounted-For-Water Percentage was Exceeded in 2009." (AG IB at 10)

The AG states that in the Chicago Suburban, Southwest Suburban and South Beloit districts, more water entered IAWC system than it was authorized to charge consumers for, even after applying the tariff unaccounted-for-water percentages plus the 1.25% unbilled authorized consumption factor. (*Id*. at 10-11)

C. Staff Position

In its reply brief, Staff observes that the AG did not submit testimony in this proceeding. Staff continues, "Nonetheless, [in its initial brief] the AG seeks to re-litigate an issue it lost in the 2008 Reconciliation Order [in Docket 09-0151] – the Commission-authorized allowance of 1.25% for unbilled, authorized consumption." (Staff RB at 4)

Staff states, "As the Commission noted in ins 2008 Reconciliation Order, unbilled, authorized consumption consists of: "water [which] is actually used -- but [which] is not metered and billed -- for various known purposes such as hydrant and main flushing, street cleaning and fire fighting." (Staff RB at 4, citing Docket 09-0151, Order at 24)

Staff cites and quotes language from pages 25 to 27 of the Order in Docket 09-0151. (Staff RB at 5-7)

Staff argues that the AG now attempts to re-litigate the issues decided by the Commission in the 2008 Reconciliation Order in Docket 09-0151, this time without benefit of any witness testimony, and that this attempt should be rejected. (*Id*. at 7)

According to Staff, the Commission's 2008 Reconciliation Order disposes of the AG's arguments on a preemptive basis, and the AG is left to argue that the Commission's decisions are not res judicata. Staff argues, "However, the AG has adduced, if anything, less evidence in this proceeding than it did in support of its position in the 2008 Reconciliation Order." Staff adds, "For example, as noted above, the Commission rejected the use of the LMO-2 forms in favor of the AWWA standards. The AG continues to rely on LMO-2 information." (*Id*., citing AG RB at 5)

Staff asserts that in its 2008 Reconciliation Order, the Commission adopted a simple and sensible solution to the unbilled authorized consumption issue. (Staff RB at 7) Staff states that the Commission permitted the Company to utilize the 1.25% allowance from the AWWA M36 Manual, relied upon by water engineers; that it required the Company to track, beginning on January 1, 2013, unbilled, authorized consumption for a one-year period, corresponding with the 2008 reconciliation year; and that it directed the Company to work with Water Department Staff to develop appropriate methods of tracking unbilled-authorized water consumption for a one-year period. Staff submits that IAWC has undertaken to both track unbilled, authorized consumption, and to work with Water Department Staff in compliance with the Commission's second and third directives. (*Id*., citing IAWC Ex. 3.0 at 7-8)

D. Commission Analysis and Conclusion

More water is delivered to the IAWC distribution system than it delivers and sells to customers. The difference between the quantity of water delivered to the IAWC distribution system and the quantity of water delivered to customers is sometimes described as non-revenue water ("NRW"). IAWC witness Hillen identified two "separate and distinct" subsets of non-revenue water. (IAWC Ex. 3.0 at 3) They are unaccounted-for-water ("UFW") and unbilled authorized water ("UAW").

With respect to unaccounted-for-water, IAWC's tariff sets forth a maximum percentage – for each of its service areas -- for which the Company is allowed to recover costs. IAWC's tariff defines unaccounted-for water as "the amount of water that enters the Company's distribution system and is not used for sales to customers or for other known purposes as determined by meter measurement or, where no meter reading is available, by reasonable estimation procedures."

In Docket 09-0151, the Commission accepted, as reasonable, the characterization of unaccounted-for water as "the difference between water system

input volume and authorized consumption: i.e., water that has for practical purposes, been lost." (Docket 09-0151, Order at 24)

With respect to unbilled authorized water, the Commission found, "By contrast, unbilled-authorized water is not water that has been 'lost' due to leaks, main breaks or other causes. Rather, unbilled-authorized water is actually used -- but is not metered and billed -- for various known purposes such as hydrant and main flushing, street cleaning and fire fighting." (*Id*.; see also Docket 10-0203, IAWC Ex. 3.0 at 2)

As it did in Dockets 08-0281 and 09-0151, IAWC proposes an allowance of 1.25% as a reasonable estimate of unbilled authorized water usage.

In its brief, the AG argues that unbilled authorized water usage falls within the definition of unaccounted-for-water in IAWC's unaccounted-for-water tariff, and Section 8-306(m) of the Act. The AG contends that the unbilled authorized water usage factor IAWC has applied does not meet the requirements of the tariffs and the statute as it is not known or measured, and the Company has not applied any estimation procedures.

The AG also argues that even if the Commission accepts IAWC's position that unbilled authorized water usage should be treated separately from unaccounted-for-water, the LMO-2 reports are the only record evidence based on the company's specific operations, and this evidence demonstrates that the 1.25% value IAWC seeks to recover in this docket is excessive.

Having reviewed the record in the instant proceeding and the Commission's Orders in Dockets 09-1051 and 08-0218, the Commission finds, as it did in Docket 09-0151, that it is reasonable to draw a distinction between unaccounted-for water and unbilled authorized water, as urged by Staff and IAWC. (Docket 09-0151, Order at 24) The Commission again finds that unbilled authorized water is not water that has been "lost" due to leaks, main breaks or other causes. Rather, unbilled authorized water is actually used -- but is not metered and billed -- for various known purposes such as hydrant and main flushing, street cleaning and fire fighting.

As noted above, IAWC proposes an allowance of 1.25% as a reasonable estimate of unbilled authorized water usage. An allowance of 1.25% was approved, over the AG's objections, in Dockets 08-0218 and 09-0151. In the current case, IAWC witness Hillen testified that because the Company has not historically fully tracked all forms of authorized consumption, such as unbilled consumption for water used for firefighting, street cleaning and main flushing, the Company estimates unbilled authorized consumption in accordance with the American Water Works Association ("AWWA") M36 Manual. He stated that the M36 Manual provides that, based upon the findings of numerous water audits worldwide, a default value of 1.25% is a reasonable estimate of unbilled authorized consumption. (IAWC Ex. 3.0 at 4) The Staff concurs in this recommendation.

Upon consideration of the recommendations and evidence in the record, and the findings made above, the Commission finds, as it did in Docket 09-0151, that use the 1.25% value in the AWWA M36 manual provides the most reasonable and accurate estimate of the amount of unbilled authorized consumption for such uses as hydrant and main flushing, firefighting and street cleaning, for the reconciliation year. The Commission again agrees with IAWC and Staff that an allowance of 1.25% for unbilled authorized consumption is appropriate.

As noted above, in Docket 09-0151, the Commission directed IAWC, at Staff's urging, to track unbilled-authorized consumption for a period of one year, beginning on January 1, 2013, and to present the results as part of its reconciliation for that year. Hopefully, this information will be useful in assessing this contentious issue in the reconciliation proceeding for the 2013 period and thereafter.

V. EXCESS SEWAGE FLOW CHARGES

In Docket No. 00-0476, the Commission approved, with conditions, IAWC's purchase of the assets of Citizens Utilities Company of Illinois. Included in the transaction was the assumption by IAWC of Citizens' agreement with the City of Elmhurst reached in 1975. Under that Agreement, Elmhurst provides treatment of sewage from IAWC's Country Club District. The Agreement contains a provision whereby the unit rate for treatment of Country Club District sewage is increased by a factor of 10 if the daily flows of sewage from the Country Club District exceed 600,000 gallons or the peak flow exceed 415 gallons per minute.

In 2008, which was the subject of the reconciliation proceeding in Docket 09-0151, the peak flows exceeded the contract limit in three separate instances during a six-day period of heavy rainfall, triggering the rate multiplier in the Country Club District. The charges for those excess flows totaled $44,399.

In Docket 09-0151, the Commission noted that a the high flows experienced by Country Club's sanitary sewers during wet weather periods were attributed to the "inflow" and "infiltration" ("I/I") of extraneous water into the sewer system. In Docket 09-0151, the Commission agreed with Staff that IAWC should have begun addressing I/I problems in the "public" or "Company" side of the system -- such as where ground water enters the sanitary sewers through such places as cracks, holes and defective joints in manholes and sanitary sewer mains -- earlier than it did. The Commission found that the Company had knowledge of these problems and control over the sources and the repair of them, and that customers should not have to bear 100% of the cost of excess charges associated with I/I from the Company's side of the system. The Commission agreed with Staff that these costs should be subject to a 50/50 sharing between customers and IAWC. (*Id*. at 40)

In the current case, Docket 10-0203, Staff again contends that the excess flow charges associated with I/I from the Company's side of the system in 2009 should not

be borne solely by customers, but should instead be subject to a 50/50 sharing between customers and IAWC as was ordered in Docket 09-0151.

In its testimony and briefs, IAWC disagrees with the Staff position. In its briefs, the AG concurs in the Staff recommendation.

A. IAWC Position

IAWC states that this issue concerns the responsibility for excess sewage flow overage charges and the allocation of those costs between the Company and Country Club District customers as proposed by Staff witness Atwood and responded to by Company witness Smyth. IAWC asserts that the issue pertains only to IAWC's Country Club service area and is tied to the "unique nature of the agreement" with the Village of Elmhurst for the treatment of the Company's customers' sewage in this service area. (IAWC IB at 4)

On May 15, 2001, the Commission approved the Company's purchase of the assets of Citizens Utilities Company of Illinois in Docket No. 00-0476. Included in the transaction was the assumption by IAWC of Citizens' agreements with four providers of sewage treatment services. One of those agreements, dated November 17, 1975, between the City of Elmhurst and Citizens, contained a provision that called for the unit rate for treatment of Country Club District sewage to be increased by a factor of 10 should the daily flows of sewage from Citizens' system exceed 600,000 gallons or the peak flow exceed 415 gallons per minute.

IAWC asserts, "Due to rainfall in Chicago during 2009, the peak flow exceeded the contract limit in three separate instances covering six days of significant rainfall, triggering the rate multiplier in the Country Club District." (*Id*.)

Rainfall is a source of sewer system inflow and infiltration ("I/I") and affects the volume of waste water carried through sewer mains on the waste water's journey to a sewage treatment facility. Inflow is a "clean" waste water flow and results from footing drains and storm water sump pumps connected to the sanitary sewer system, while infiltration, also a clean waste water flow, results from seepage of ground water into the sanitary sewer system through cracks and defective joints in mains, manholes, and customer service lines. IAWC states that all sewer systems suffer from some level of I/I and no industry standard exists for defining an acceptable level of I/I; and that during high rainfall events, unauthorized connections of footer and storm drains to the sanitary system may "dramatically" affect the amount of sewage flows through the sanitary sewer collection system. (*Id*. at 4-5)

Within the Country Club District, the Company provides purchased sewage treatment service to approximately 390 residential and commercial customers in or adjacent to the community of Elmhurst, Illinois. IAWC collects County Club's sewage and transports it to the City of Elmhurst for treatment and disposal. In the 2006 and 2007 Company reconciliation proceedings, the Company incurred treatment charges

from Elmhurst that had been stepped up by a factor of 10 when the peak flows exceeded 415 gallons per minute during high rainfall events. IAWC asserts that such charges were incurred under the terms of a contract between IAWC and Elmhurst and were properly included in the prudently-incurred costs of purchased sewage treatment service and recovered through the respective reconciliations as approved by the Commission. (IAWC IB at 5)

IAWC states that in its most recent reconciliation proceeding for the year 2008 in Docket No. 09-0151, the ruling made by the Commission resulted in a "significant departure" from past practice. (*Id*.)

In the instant docket, Staff witness Atwood testified that the excess sewer flow costs should be allocated in the same manner as the last docket. IAWC opposes Staff's position and requests that the Commission consider a different approach for this docket, in light of the testimony provided. (IAWC IB at 6)

In Section II.B of IAWC's initial brief is titled, "The Company has and continues to properly maintain the Country Club System."

IAWC states that Company witness Smyth provided new evidence regarding the "significant steps" the Company has taken to improve the sanitary system in the Country Club Service Area since a sewer service system evaluation study ("SSES") was performed in 2009. For example, the Company rehabilitated an additional 8,809 linear feet of sanitary sewer lines since 2009, bringing the total "public" main line sewer rehabilitation to 14,903 of the total 19,851 linear feet in the system. The Company has also replaced sewer main located under streets and at lift station facilities. (IAWC IB at 6-7) IAWC argues that in light of the significant rehabilitation work completed on the "public" side, it is now likely that a greater portion of overall I/I can be attributed to the "private" side than the "over one third" SSES report figure that was cited in the 09-0151 Order. (*Id*. at 7)

On the "private" side, IAWC has continued its efforts to address the issue of unauthorized connections to its sanitary system and has exceeded the "standards" being considered by the Metropolitan Water Reclamation District of Greater Chicago Advisory Technical Panel – Updating Infiltration and Inflow Control. (IAWC IB at 6-7, citing Exhibit IAWC Ex. 2.0 at 2-3 and 6-7) Additional information regarding the Company's efforts was provided in Mr. Smyth's Exhibit 2.01. Thus, IAWC asserts, it is and has been addressing the issues discussed in the Commission's July 2012 Order. (IAWC IB at 6-7)

IAWC further argues that the excess flow charges are in many cases the result of factors outside of IAWC's control. IAWC asserts, "As explained by Mr. Smyth, the situations that give rise to the penalty clause of the Elmhurst contract are primarily caused by weather and not by 'unreasonable' or 'imprudent' acts on the part of the Company." (*Id*. at 7) The impact of weather in 2009 was "particularly significant." In February 2009, rainfall was 200% of the normal amount for northeastern Illinois

according to the National Climatic Data Center. On February 26, 2.45 inches of rain fell on the Chicago area. In March, 2.59 inches of rain fell in the Chicago area on the seventh and eighth. During the last eight days of April, rainfall totaled 2.27 inches in the Chicago area. On one day in May, 2.0 inches of rain fell in the Chicago area, "causing minor peak flow overages" on the 26th and 27th. Four days of continuous rain in the middle of June "caused minor peak flow overages" during that time period. The Company experienced excess flows again in October. October 2009 was the wettest on record in Illinois and 2009 was the second wettest year on record in Illinois. (IAWC IB at 7-8, citing IAWC Exhibit 1.0)

According to IAWC, the excess charges in question arise only during such heavy rain events and do not occur in the normal day-to-day operation of the Country Club system. Further, the taxing effect of weather on water and sewer systems is not unique to IAWC's Country Club district. Mr. Smyth testified that Elmhurst -- the counterparty to IAWC's sewer treatment contract -- suffers from weather events that have a dramatic impact on its water and sewer systems. As recently as April of 2013, Elmhurst experienced a storm that produced seven inches of rain in 15 hours, which occurred at a time when the ground was already saturated and unable to absorb any additional water. IAWC contends that "this significantly increased the amount of water that went into the sewer system and resulted in significant flooding" (IAWC IB at 8, citing IAWC Exs. 2.01R and 2.02R), and that Elmhurst's struggles with weather is not limited to 2013. In IAWC Exhibit 2.02R, Elmhurst Acting Mayor Levin provided "a history of flooding events," citing to various rain events that have occurred in the past. Two of the cited events correspond to the 2009 February and March rain events cited by Company witness Kerckhove as drivers of excess charges for the 2009 reconciliation year. (IAWC IB at 8, citing IAWC Ex. 1.0)

In sum, the Company asks the Commission to consider the "dramatic impact" that significant weather events have on the Country Club system. In IAWC's view, the evidence shows that circumstances giving rise to the excess charges are not part of the normal day to day operation and not due to imprudent maintenance or operation on the part of IAWC. IAWC also argues, "Further, as the evidence concerning the recent 2013 weather events displays, even after completion of extensive rehabilitation of the 'public' side of the system, the Country Club system (like all systems in this geographic area) is still impacted by the few, but intense, weather events that may occur each year." (IAWC IB at 8)

Reply Brief

In its reply brief, IAWC states that both AG and Staff raise the issue of IAWC's prudence as the basis for the proposal to disallow one-third of the sewage flow charges. (IAWC RB at 7, citing AG IB at 13-15 and Staff IB at 10-11) According to IAWC, there are several reasons why this position should be rejected.

First, IAWC contends that the charges in question result from terms of the agreement between IAWC and Elmhurst and are driven in large part by factors beyond IAWC's ready control: the weather and illegal storm drain connections. (IAWC RB at 7-8)

Second, IAWC argues, "Staff's claim that 'The Company has been aware that the Country Club sanitary sewer system suffered from significant levels of I/I for several years prior to 2009, and nonetheless did not act to address it until 2009' as a justification for Mr. Atwood's proposed imprudence disallowance, is somewhat misleading." (IAWC RB at 8, citing Staff IB at 10) According to IAWC, when considering the issue of utility prudence in the context of a reconciliation proceeding, the Commission must consider the actions and decision of the Company in light of the facts available to the Company at the time the decisions were made. (IAWC RB at 8, citing *Illinois Power Co. v. Illinois Commerce Commission*, 245 Ill. App. 3d 367, 371 (3d Dist. 1993)) IAWC states that in 2009, it would have been aware of only four instances when the Agreement with Elmhurst had imposed increased charges and "would have never been subjected to any disallowance (or even proposed disallowance) of these costs." (IAWC RB at 8) In 2006, the amount was $20,252 resulting from only six significant rainfall events. In 2007, the amount decreased to $329.35. In both the 2006 and 2007 reconciliations, the respective amounts were found by Staff, and ultimately the Commission, to be part of the Company's prudently-incurred costs. Given the few days in 2006 when the Agreement flows were exceeded, and that only one incident occurred in 2007 costing an additional $329 in treatment costs, the Company argues that it would have had no reason to think 2008 and 2009 would experience weather events that so significantly impacted the locals around the Country Club service area. (IAWC RB at 8)

IAWC next argues that the AG erroneously attributes all of I/I to "non-sewage water [that] enters the sanitary sewer system through breaks in the collection plant," (AG IB at 13) "misrepresenting" Staff witness Atwood's direct testimony. Mr. Atwood stated, "Inflow is surface water that directly enters the sanitary sewer collection system. Typical inflow sources are: low lying manhole lids with defective covers; storm water inlets improperly connected to the sanitary sewer collection system; illegally connected area drains on private property, such as basement sump pumps, and building foundation or footing drains, although this is not an exclusive list. Infiltration is ground water that enters the sanitary sewer collection system through cracks, holes and defective joints in manholes, sanitary sewer mains and customer sewer service lines."

IAWC states, "As Mr. Atwood discussed, I/I is just that – both inflow and infiltration." Illegal connections to the Company's sewer collection system have a significant impact on the amount Elmhurst charges the Company for sewer flows during high rainfall events. Company witness Smyth testified, "In general, 50% of I/I comes from private sources, and 50% comes from public sources. The Company has made significant investment in the public side of the system, essentially performing activities to eliminate or reduce I/I well above the industry standard." (IAWC RB at 9)

According to IAWC, Staff acknowledges that the Company initiated efforts during the 2008 reconciliation year to conduct a SSES in order to make the appropriate system improvements to minimize I/I. (*Id*., citing Staff Ex. 2.0 at 7-9)

IAWC identifies a timeline to put the Country Club charges in perspective and show the prudent actions taken by the Company. (*Id*. at 9-10)

IAWC states that "it was not until the May of 2010 (the Staff and intervenor supplemental testimony date, which occurred after initial hearings we all but concluded in the prior reconciliation Docket … that the Company had any knowledge that any party was challenging the prudency of these cost[s]." (IAWC RB at 10, citing Tr. 227-228 and Staff Ex. 2.00 in Docket 09-0151)

IAWC argues that based on the caselaw and the "facts available to the Company at the time decisions were made," it is clear that IAWC's actions regarding the Country Club system were prudent. IAWC contends, "Staff acknowledges that the recommendations made by the SSES on the public side of the collection system have been completed. (citations omitted) This work demonstrates that IAWC has acted and continues to act prudently before, during, and after the 2009 reconciliation year." (IAWC RB at 11)

B. Staff Position

Staff recommends a partial disallowance of excess flow charges originating in its Country Club District, which the company is obliged to pay to the City of Elmhurst ("City") under the agreement described above. (Staff IB at 6-7, citing Staff Exs. 2.0, 3.0)

Staff asserts that in the 2009 reconciliation year, the Company's costs for disposing of sanitary sewage from the Country Club District increased considerably due to peak sewage flows resulting from inflow and Infiltration (I/I) exceeding the limits given above. The excess sewage flow overage charges added an extra 2/3 of the normal flow costs to the Country Club District's total cost of sewage treatment charged to the Company in 2009. The Company's total actual cost of sewage treatment purchased for 2009 was $299,339. In 2009, the overage amount charged for excess sewage flow exceeding the flow limits given above is $120,182. The total cost without the overage is $179,157. Therefore, the excess flow overage cost of $120,182 increased the total cost of sewage treatment charged to the Company in 2009 by approximately 67%. (Staff IB at 7; Staff Ex. 2.0 at 5-7)

According to Staff, "I/I" is a term used to describe extraneous water that enters a sanitary sewer collection system. This water is not wastewater generated by customers, but is instead relatively clean water from rainfall or from groundwater surrounding the sewer pipe. "Inflow" is surface water that directly enters the sanitary sewer collection system. Typical inflow sources are low-lying manhole lids with defective covers; storm water inlets improperly connected to the sanitary sewer collection system; illegally connected area drains on private property, such as basement

sump pumps, and building foundation or footing drains, although this is not an exclusive list. (*Id*.) "Infiltration" is ground water that enters the sanitary sewer collection system through cracks, holes and defective joints in manholes, sanitary sewer mains and customer sewer service lines. (Staff IB at 8, citing Staff Ex. 2.0 at 3-4)

Staff states that almost every sanitary sewer collection system experiences some degree of I/I. The amount of I/I that a sanitary sewer collection system is subject to is dependent on many factors, including, but not limited to: water table elevation, age of the sanitary sewer collection system, the type of materials that the pipe and manholes are made of, the quality of the initial installation, location of manholes, and the number of illegal connections to the sanitary sewer collection system that are sources of I/I such as sump pumps, downspouts and area drains. (*Id*., citing Staff Ex. 2.0 at 4-5)

Staff witness Mr. Atwood testified that I/I may result in quantities of wastewater that are much greater than the sanitary sewer pipes, pump stations and wastewater treatment plants are designed to effectively transport and treat. These results may include backup of sewage into homes, sewage overflows from manholes and interference with proper operation of wastewater treatment plants. (*Id*., citing Staff Ex. 2.0 at 4-5)

According to Staff, IAWC has been aware that the Country Club sanitary sewer collection system suffered from significant levels of I/I since well before 2009. (Staff Ex. 2.0 at 7) The Company conducted a Sewer System Evaluation Study ("SSES" or "SSE study") of the Country Club sanitary sewer collection system in 1999. Also, in Docket No. 09-0151, AG witness Dennis Streicher testified that he informed IAWC of the high sewage flows experienced by Country Club several years before 2008 and that IAWC was told of Elmhurst's intention to install a meter to measure Country Club sewage flows back in 2002. Subsequently, the Company was charged sewage flow overage rates by Elmhurst in 2006. (Staff IB at 9)

Mr. Atwood testified that IAWC has attempted to reduce the amount of I/I received by the Country Club District's sanitary sewer collection system. It had a sanitary sewer system evaluation study of the entire sanitary sewer collection system performed in 2009. (Staff Ex. 2.0 at 7-8) Since the study, the Company has made significant investment in sanitary sewer collection system improvements, such as sewer lining, manhole rehabilitation, sewer main replacement, removal of unauthorized connections, and usage of flow monitors to monitor I/I levels. However, these improvements were not completed until the end of December 2009 or later. (Staff IB at 9)

IAWC has also attempted to reduce I/I from customer-owned portions of the sanitary sewer collection system with the establishment of a program to provide grants and loans to those customers who remove their storm water connections from the system. However, the grant and loan program did not become effective until November 22, 2009; no customers participated in the grant and loan program in 2009, and no

information on the grant and loan program was provided to customers in 2009, the reconciliation year. (Staff IB at 9-10, citing Staff Ex. 2.0 at 8)

Staff states that IAWC inherited the condition of the sanitary sewer collection system when it acquired the Country Club service area from Citizens, and it assumed the pre-existing sewage disposal Agreement between the City and Citizens. The Company has undertaken efforts to reduce the quantity of I/I and to renegotiate terms of the Agreement with Elmhurst. However, the I/I tributary to the Country Club's sanitary sewer collection system results in significantly higher sewage disposal rates and associated costs to the Company. Staff views these costs as somewhat arbitrary since they are dependent on groundwater levels and weather conditions; however, they can be significant, adding 67% to Country Club's sewage disposal costs in 2009. (Staff IB at 10)

In summary, Staff asserts that IAWC has been aware that the Country Club sanitary sewer collection system suffered from significant levels of I/I for several years prior to 2009, and nonetheless did not act to address it until 2009. The Company has also been aware that the City had the ability to impose extremely high charges for excess sewage flows, was concerned with the high sewage flows from Country Club, and intended to install its own flow measurement system to quantify the high flows. (Staff IB at 10)

In Staff's opinion, not all of the excess sewage flow overage costs were prudently incurred. (Staff Ex. 2.0 at 9) Therefore, Staff argues, it is not equitable that the customers should bear the entire burden of the sewer overage charges for the I/I related excess sewage flows. The Company owns the sanitary sewer collection system and has the responsibility to reduce I/I tributary to the sanitary sewer collection system. Therefore, Staff contends, the Company should bear some of the responsibility of the additional costs incurred for the excess sewage flow overage, instead of the customers being held entirely responsible for these costs. (Staff IB at 10-11)

Staff submits that this position is supported by Commission rules and a prior Commission decision. Section 655.50(b)(3)(C) of 83 Ill. Adm. Code Section 655 provides, "The reconciliation components shall not include costs associated with unaccounted for water or any storm water inflow or infiltration in contravention of an Order of the Commission directing that such costs not be reflected in rates." (*Id*. at 11)

Staff argues that "this is important," because in its Order in Docket No. 09-0151 entered July 31, 2012, the Commission found, in part, on pages 40-41:

> The Commission agrees with Staff that IAWC should have begun addressing I/I problems in the "public" side of the system -- such as where ground water enters the sanitary sewers through such places as cracks, holes and defective joints in manholes and sanitary sewer mains -- earlier than it did. The Company had knowledge of these problems and control over the sources and the repair of them. Customers should not have to

bear the full cost of excess charges associated with I/I from the Company's side of the system.

The Commission also found:

> Responsibility for the I/I problem from the customer-owned private sources, however, is more complicated. IAWC does not have direct control over the removal of unauthorized customer-owned building foundation and footing drains, other than by such means as disconnection of service which IAWC characterized as a drastic step. Although other Parties are critical of IAWC's handling of these problems, they do not appear to be specifically recommending disconnection of offending customers. Accordingly, the Commission does not believe IAWC should be found imprudent, or subject to the 50/50 sharing, with respect to its incurrence of the portion of excess sewerage flow charges associated with I/I from these customer-owned sources.
>
> Staff notes that an SSES report stated that inflow from foundation drains is responsible for over one-third of I/I received by the Country Club sanitary sewer collection system. (Staff Initial Brief at 23) Thus, the Commission finds it reasonable to exclude one-third of the excess flow charges from the 50/50 sharing. The 50/50 sharing will be applied to the other two-thirds of the excess flow charges in the reconciliation year….

In Staff's view, the same logic applies for this reconciliation year. The evidence reflects that IAWC only completed implementation of public side measures in December, 2009, well after it knew of them, and too late to have an effect on the 2009 year for reconciliation purposes. Accordingly, the Staff recommends that "the Commission do precisely what it did in the 2008 reconciliation – find that the one-third of I/I constituting inflow from foundation drains should be excluded from overage charges, and the remainder split evenly between customers and the company." (Staff IB at 12)

According to Staff, IAWC contends that Staff does not claim the Country Club sanitary sewer system's level of inflow and infiltration is excessive or out of the ordinary, instead that Staff's proposed adjustment for I/I is made in response to the terms of the sewage disposal Agreement between the Company and the City of Elmhurst. The Company also asserts that situations that give rise to the penalty clause of the Elmhurst contract are primarily caused by wet weather that does not occur on a day-to-day basis and is therefore not imprudent on the part of the Company. (Staff IB at 12-13, citing IAWC Ex. 2.0R at 1-3)

In response, Staff asserts that its recommendation is based on a combination of factors, including those noted above. (Staff IB at 13-14)

Staff agrees with the Company that precipitation is the source of surface and ground water that can result in situations where the measured sewage flows exceed the

normal flow charge rate in the Agreement with Elmhurst. However, Staff argues, it is this water, combined with the defects in the Company's sanitary sewer collection system, that result in the I/I carried by the sanitary sewers. (*Id*. at 14, citing Staff Ex 3.0 at 2-3)

Staff argues that IAWC's "contention that it has acted prudently since the excess sewage flow charges from I/I do not occur on a day-to-day basis is likewise flawed." (Staff IB at 14) According to Staff, IAWC has known about its Country Club District I/I issues and their potential impacts for some time, and the fact that the excess sewage flow overage problem only occurs periodically does not absolve the Company of any responsibility to address it. (Staff IB at 14)

Reply Brief

Staff states that in IAWC's initial brief, the Company relies on two factors which, in its view, should absolve it from bearing the cost of excess flow charges. First, Staff states, IAWC contends that 2009 was an unusually wet year, and that excess flow charges attributable to inflow and infiltration (I/I) are largely attributable to weather conditions. Second, IAWC contends that beginning in late 2009, it has taken steps to ameliorate the public side I/I problem. In Staff's view, neither of these contentions has merit, at least for the reconciliation year. (Staff RB at 1-2)

Staff states that it agrees with the Company's contention "that wet weather precipitation is the source of surface and ground water that can result in I/I." (Staff RB at 2) However, Staff argues, it is this water, combined with the defects in the Company-owned Country Club's sanitary sewer collection system that result in the entry of I/I into the sewer system. According to Staff, the record reflects that the Company has known that it had a significant I/I problem in the Country Club District since at least 1999, and has known since at least 2002 that Elmhurst intended to start metering wastewater flow from the Country Club district. (Staff RB at 2)

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According to Staff, IAWC should have reasonably concluded prior to 2009 that wet weather precipitation and associated I/I will occur from time to time, and the fact that the excess sewage flow overage problem only occurs periodically does not absolve the Company of any responsibility to address it. (*Id*. at 2-3)

Staff asserts that the Company did not take any affirmative steps to ameliorate the I/I problem at that time. Staff argues, "As long as the costs associated with the I/I problem could be passed along to customers, it appears that the Company was prepared to do nothing. Only when it appeared likely that the Company might bear some of the costs did it take steps to address the I/I problem." (Staff RB at 3)

Staff states that while IAWC has begun taking steps to address the I/I problem in the Country Club District, those measures cannot be attributed to this reconciliation year, for the simple reason that the measures in question were not commenced until the end of the reconciliation year. These measures were implemented in response to a

study completed in 2009, and such measures have been completed "since" 2009, and apparently towards the end of the year. Accordingly, Staff argues, while the Company has taken steps which might affect subsequent reconciliation years, they cannot be deemed to have affected this reconciliation. (Staff RB at 3)

C. AG Position

The AG did not provide witness testimony on this issue. In its initial brief, the AG argues that when assessing whether IAWC acted prudently in regard to incurring over $120,000 in excess flow charges in 2009 in the Country Club district, the Commission must review IAWC's maintenance of the sanitary sewer collection system in the Country Club district up to and including 2009. When evaluating prudence within the context of a reconciliation review, the Commission applies the standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. *Illinois Power Co. v. Illinois Commerce Comm'n*, 245 Ill. App. 3d 367, 371 (3rd Dist. 1993). (AG IB at 13-14) The AG states that "the courts and the Commission have been clear that '[i]n determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.' *Id*. at 371." (AG IB at 14)

According to the AG, IAWC has described actions it allegedly took to address I/I and to maintain its system, but these actions did not occur until late 2009 and later. Of the first five work items listed on IAWC Exhibit 2.01, 8,809 feet of sewer main line rehabilitation was completed from September to December 2009; rehabilitation of 45 manholes was completed from September to December 2009; lining of 90 sanitary sewer laterals was completed from 2011 to 2013; replacement of the 10" sewer line under Grand Ave. was completed in March 2011; and replacement of the lift station and force main line was completed in December 2010 and January 2011. The AG asserts that despite excess flow charges exceeding $44,000 in 2008, excess flow charges equaling $90,000 from February to June 2009, excess flow charges in previous years, a 1999 study outlining flaws in the Country Club district infrastructure, and a February 2009 study outlining the same, IAWC has offered no explanation for why it failed to act before September, 2009 to finally remedy the I/I problem. (AG IB at 14; AG RB at 3-4)

Additionally, the AG argues, while IAWC might point to the 2009 rainfall as an uncontrollable event (IAWC Ex. 2.0R at 2-3) causing I/I beyond its control, rebuttal testimony and related exhibits offered by Company witness Smyth shows that the rain events in February and March 2009 were hardly unusual compared to other bad storms in recent years. The AG states that IAWC Ex. 2.02R shows that in terms of absolute magnitude of rain, the two 2009 rain incidents rank 6th and 8th, respectively, out of eight listed events, and the two 2009 incidents rank 4th and 8th in terms of rate of rain flow. The AG states that of the 64 days in 2009 that saw rain, there was no rain event that was equal to or more than the seven inches seen in April 2013, according to IAWC Ex. 2.02R; the largest rain event in 2009 appears to have been a three-inch storm in early March. (AG IB at 15)

Section 9-220.2(c) of the Act provides that the Commission must determine if reconciliation amounts are prudently incurred in the reconciliation review. In the AG's view, the evidence presented in this docket demonstrates that IAWC failed to take action to limit or control the high flows it delivered to the Elmhurst sewage treatment system. The AG asserts that IAWC did not conduct regular maintenance until the results of its 2009 Sanitary Sewer Evaluation Study demonstrated that the majority of the I/I (55%) came from the public, i.e., the utility system, rather than from private sources. According to the AG, these factors along with the other evidence in the record support a disallowance of one-third of the excess flow charges for 2009 assessed under the City of Elmhurst sewage treatment agreement for imprudence, consistent with the Commission's Order in IAWC's 2008 reconciliation and Staff's recommendation in the current case. (AG IB 15, citing Docket No. 09-0151, Order at 40-41)

Reply Brief

In its reply brief, the AG responds to an assertion in IAWC's initial brief that that "[i]n light of the significant rehabilitation work completed on the 'public' side, it is now likely that a greater portion of overall I/I can be attributed to the 'private' side than the 'over one third' SSES report figure that was cited in the . . . 09-0151 Commission Order." According to the AG, "Whether this statement is true or not, the time frame under consideration in this proceeding is not 'now,' i.e. November 2013, but rather 2009." (AG RB at 4)

The AG states that IAWC also argues at page 7 of its initial brief that excess flow charges are "in many cases the result of factors outside of IAWC's control" due to inclement weather conditions. The AG responds, "While it cannot be disputed that no one can control the weather, the Company has the power to improve both the public infrastructure in the Country Club district, as shown by the work items on IAWC Exhibit 2.01, and the loan/grant program for private homes described in the Company's response to DR WHA 2.07 (contained in AG Group Exhibit 1)." (AG RB at 4-5)

The AG responds to statements in IAWC's initial brief that "in February 2009, rainfall was 200% of the normal amount for northeastern Illinois according to the National Climatic Data Center" and that "October 2009 was the wettest on record in Illinois and 2009 was the second wettest year on record in Illinois." According to the AG, the months of February and October 2009 did not produce the highest excess flow charges owed to the City of Elmhurst in 2009; the excess flow charges in March, April, and June of 2009 ($25,689, $21,396, and $21,367, respectively) were higher than the excess flow charges in February and October ($18,993 and $17,908, respectively). The AG asserts, "Accepting the Company's contention that February and October of 2009 were months of unusually severe rain, it is not obvious that there was a strict correlation between intensity of rainfall and the excess flow charges in the Country Club district." (AG RB at 5)

The AG states that IAWC then goes on, in its initial brief, to compare its "plight" to that of the municipal sewage system in the neighboring City of Elmhurst. The AG asserts that IAWC Exhibits 2.01R and 2.02R did not show that the heavy April 2013 rains led to analogous I/I into the City of Elmhurst's sanitary sewer system; rather, the news article and photographs in Exhibit 2.01R depict overland flooding in Elmhurst. The letter from the Acting Mayor of Elmhurst reproduced at IAWC Exhibit 2.02R briefly mentions at page 1 an "increase[] [in] the amount of water that went into our storm sewer system," but does not quantify that effect, and says nothing about the City's sanitary sewer system or I/I therein. (AG RB at 5-6)

The AG responds to a statement in IAWC's initial brief that "as the evidence concerning the recent 2013 weather events displays, even after completion of extensive rehabilitation of the 'public' side of the system, the Country Club system (like all systems in this geographic area) is still impacted by the few, but intense, weather events that may occur each year." The AG responds that IAWC Exhibits 2.01R and 2.02R, which dealt with the April 2013 storm, said nothing about how the Country Club sanitary sewer system was impacted by the April 2013 rainstorm; the exhibits referred to overland flooding and unmeasured I/I into the storm sewer system in the City of Elmhurst. The AG states IAWC could have provided evidence of the impacts of the April 2013 rainstorm upon the Country Club district system, but chose not to. (AG RB 6)

D. Commission Analysis and Conclusion

In Docket No. 00-0476, the Commission approved, with conditions, IAWC's purchase of the assets of Citizens Utilities Company of Illinois. Included in the transaction was the assumption by IAWC of Citizens' agreement with the City of Elmhurst. Under that Agreement, Elmhurst provides treatment of sewage from IAWC's Country Club District. The Agreement contains a provision whereby the unit rate for treatment of Country Club District sewage is increased by a factor of 10 if the daily flows of sewage from the Country Club District exceed 600,000 gallons or the peak flow exceed 415 gallons per minute.

In 2008, the peak flow exceeded the contract limit in three separate instances during a six-day period of heavy rainfall, triggering the rate multiplier in the Country Club District. The charges for those excess flows totaled $44,399.

In 2009, which is the subject of the current proceeding, IAWC had excess flow charges of $120,182.

In the reconciliation proceeding for 2008, the Commission noted that the high flows experienced by Country Club's sanitary sewers during wet weather periods were attributed to the "inflow" and "infiltration" ("I/I") of extraneous water into the sewer system. (Docket 09-0151, Order at 40) Staff witness Atwood provided similar testimony in the current docket, 10-0203. (Staff Ex. 2.0 at 3)

As also observed in the Order in Docket 09-0151, Staff stated that I/I is not the typical wastewater normally generated by customers. (Docket 09-0151, Order at 40) Staff further explained, in the current case, that this water is instead relatively clean water from rainfall or from groundwater surrounding the sewer pipe. (Docket 10-0203, Staff Ex. 2.0 at 3-4) The Staff witness testified in both cases that inflow is surface water that directly enters the sanitary sewers via low-lying manhole lids with defective covers, storm water inlets improperly connected to the sanitary sewer, illegally connected area drains on private property, basement sump pumps and customer-owned building foundation and footing drains. He said infiltration is ground water that enters the sanitary sewer collection system through cracks, holes and defective joints in manholes, sanitary sewer mains and customer sewer service lines. (Docket 09-0151 Order at 40; Docket 10-0203, Staff Ex. 2.0 at 3-4)

In Docket 09-0151, the Commission agreed with Staff that IAWC should have begun addressing I/I problems in the "public" or "Company" side of the system -- such as where ground water enters the sanitary sewers through such places as cracks, holes and defective joints in manholes and sanitary sewer mains -- earlier than it did. The Commission found that the Company had knowledge of these problems and control over the sources and the repair of them, and that customers should not have to bear 100% of the cost of excess charges associated with I/I from the Company's side of the system. The Commission agreed with Staff that these costs should be subject to a 50/50 sharing between customers and IAWC. (*Id*. at 40)

In the current case, Staff offered similar testimony and arguments. Staff witness Atwood testified that while IAWC has made significant investment in sanitary sewer collection system improvements -- such as sewer lining, manhole rehabilitation, sewer main replacement, removal of unauthorized connections, and usage of flow monitors to monitor I/I levels -- these improvements did not begin until 2009 and were not completed until the end of December 2009 or later. (Staff IB at 9)

Staff accepts IAWC's contention that wet weather is the source of surface and ground water that can result in I/I. Staff's point, with which the Commission agrees, is that it is the combination of this water, and the defects in the Company-owned Country Club's sanitary sewer collection system, that result in the entry of I/I into the sewer system. The Commission again agrees with Staff that IAWC was aware that the Country Club sanitary sewer collection system suffered from significant levels of I/I for several years prior to 2009, but did not act to address it until 2009; and that IAWC was also aware that the City had the contractual right to impose extremely high charges for excess sewage flows and intended to install its own flow measurement system to quantify the high flows.

The Company's position that all excess flow charges should be borne by customers basically assumes that IAWC addressed the system defects in a timey manner, or that such improvements, even if completed prior to 2009, would not have prevented any of the excess flows associated with the rain events experienced in 2009. These assumptions are not supported by the record. Under the circumstances, the

Commission agrees with Staff and the AG that the excess flow charges associated with I/I from the Company's side of the system should not be borne solely by customers, but should instead be subject to a 50/50 sharing between customers and IAWC as was ordered in Docket 09-0151.

As indicated in the Order in Docket 09-0151, Staff noted that the 2009 sewer system evaluation study stated that inflow from foundation drains on the customers' side of the system is responsible for over one-third of I/I received by the Country Club sanitary sewer collection system. Thus, the Commission treated two-thirds of the excess flow charges as being associated with the public or Company side of the system, to which the 50/50 sharing was then applied. (Docket 09-0151, Order at 40-41) In the current case, the Commission agrees with Staff and the AG that use of the same approach would be reasonable, whereby two-thirds of the excess flow charges would be treated as being associated with the public side of the system, and the 50/50 sharing would be applied to that two-thirds portion, resulting in a disallowance of $40,081. (Staff Ex. 1.0, Sch. 1.4CC at 2) Although IAWC suggests that less than two-thirds of I/I should be attributed to the public side given the system improvements which have been made, the Commission finds this argument to be unpersuasive, at least with expect to the 2009 reconciliation year, since the improvements were not completed until December of that year or later.

As noted above, IAWC also argues that its exhibits referring to April, 2013 weather events in Elmhurst show that even after completion of extensive rehabilitation of the public side of the system, the Country Club system is still impacted by the few, but intense, weather events that may occur each year. Even assuming 2013 events are relevant to the 2009 reconciliation year, the Commission observes, as stated by the AG, that the IAWC exhibits depict and describe overland flooding in Elmhurst but they do not contain evidence of corresponding impacts on IAWC's Country Club sanitary sewer system.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the record herein, finds that:

(1) Illinois-American Water Company is a corporation that furnishes water service and sewer service to the public in portions of the State of Illinois and, is a public utility within the meaning of Section 3-105 the Act;

(2) the Commission has jurisdiction over the parties and subject matter in this proceeding;

(3) the conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of this Order;

(4) for the 2009 reconciliation year, the purchased water surcharge reconciliation schedules presented in Schedules 1.1, 1.2 AH, 1.2 CS, 1.2 DC, 1.2 F, 1.2 M, 1.2 SW, 1.2 W and 1.2 SB of Staff Exhibit 1.0 shall be

adopted; the purchased sewage treatment surcharge reconciliation schedules presented in Schedules 1.3, 1.4 CC, 1.4 V V, 1.4 RO and 1.4 RM of Staff Exhibit 1.0 shall be adopted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the purchased water surcharge reconciliation schedules for the 2009 reconciliation year as presented in Schedules 1.1, 1.2 AH, 1.2 CS, 1.2 DC, 1.2 F, 1.2 M, 1.2 SW, 1.2 W and 1.2 SB of Staff Exhibit 1.0 filed on April 3, 2013, and as summarized in Appendix A hereto, are hereby approved.

IT IS THEREFORE ORDERED the purchased sewage treatment surcharge reconciliation for the 2009 reconciliation year as presented in Schedules 1.3, 1.4 CC, 1.4 V V, 1.4 RO and 1.4 RM of Staff Exhibit 1.0 filed on April 3, 2013, and as summarized in Appendix B hereto, are hereby approved.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

Dated: January 16, 2015

Larry M. Jones
Administrative Law Judge